

THOMAS HEINRICH)	
Claimant)	
VS.)	
)	
HAMM ASPHALT, INC.)	
Respondent)	Docket No. 234,508
AND)	
)	
VALLEY FORGE INSURANCE COMPANY)	
Insurance Carrier)	

The Administrative Law Judge (ALJ) granted claimant's post-award medical treatment request and authorized, board certified neurologist and psychiatrist Dewey K. Ziegler, M.D., of the Kansas University Medical Center, as claimant's authorized treating physician.

Respondent appeals and contends the ALJ's Order should be reversed. The respondent argues claimant failed to meet his burden of proving he had a change in his condition that resulted in a need for medical treatment that was reasonably necessary to cure and relieve claimant from the effects of his work-related injury.

In contrast, claimant contends ALJ's Order should be affirmed. Claimant argues he has proven through his testimony and the testimony of Dr. Ziegler that he is in need of medical treatment to relieve the effects of his work-related injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, and considering the arguments contained in the parties' briefs, the Appeals Board (Board) makes the following findings and conclusions:

On October 27, 1999, the ALJ awarded claimant a 42 percent work disability for his June 17, 1998, work-related accident. Claimant was also awarded future medical treatment upon application and review. Respondent timely appealed the award to the Board. In a March 30, 2000, Order, the Board reduced the 42 percent work disability award to a 5 percent permanent partial general disability award based on claimant's permanent functional impairment. The Board also adopted all other orders contained in the October 27, 1999, Award, which included the future medical treatment order upon application and review. The Board's Order was not appealed to the Kansas Court of Appeals.

Thereafter, on August 18, 2000, the claimant filed an Application for Post Award Medical.¹ Claimant contends he is in need of medical treatment because he continues to experience severe headaches, neck pain and numbness in his right lower extremity as a direct result of the June 17, 1998, work injury. At the December 7, 2000, post-award hearing, claimant testified he had none of those symptoms before the June 17, 1998, accident and he has had no intervening accidents since June 17, 1998.

Respondent argues that claimant is not credible and therefore claimant's testimony is suspect and not believable. In support of this conclusion, respondent refers to claimant's regular hearing testimony, where he testified he was in so much pain he was unable to perform any type of gainful employment. But after the Board entered its March 30, 2000, Order, claimant started actively looking for work and found work as a carpenter for a construction company.

¹ See K.S.A. 44-510k(a).

At the time of the post-award hearing, claimant had been employed as a rough and finish carpenter for this construction company for approximately seven months. And the job required claimant to perform occasional heavy work. Except for an occasional doctor's appointment, claimant testified he had not missed any work.

During litigation of the initial award, respondent offered claimant a job as a flagman and claimant testified he could not do the flagman's job because of his injuries. But the Board found that all the medical experts, who testified, determined claimant was able to perform the flagman job within his permanent restrictions. Respondent points out that one of claimant's treating physicians, Dick A. Geis, M.D., placed no restrictions on claimant's activities and also found claimant was not in need of future medical treatment. In addition, Dr. Peter Bieri, evaluated the claimant, at claimant's attorney's request, on October 12, 1998. Although Dr. Bieri placed restrictions on claimant's activities, he also concluded claimant was not in need of future medical care. Dr. Sharon McKinney also saw claimant at his attorney's request. She examined claimant on April 1, 1999. Dr. McKinney found claimant stable but she also recommended claimant to apply heat to his neck, massage the neck, use mild cervical traction, do stretching exercises, use anti-inflammatory and pain medications.

The Board is mindful that Dr. Geis could not find any physiological or anatomical explanation for claimant's pain complaints. But the Board concludes that claimant's symptoms have been consistent with the histories that he has given to examining and treating physicians in that he has had severe neck pain and headaches as a result of the accidental injury. At the post-award hearing, claimant described continuing neck pain, severe headaches and right lower extremity numbness. He further described his headaches as being so severe that he becomes nauseated and has panic attacks.

In this post-award proceeding, the Board finds the most persuasive and convincing testimony in regard to claimant's need for medical treatment is the testimony of Dr. Ziegler. Dr. Ziegler is in charge of the headache clinic at the Kansas University Medical Center and has been associated with the Medical Center for some 35 years. At the request of Michael D. Franklin, M.D., who treated claimant for a laryngeal hematoma caused by the June 17, 1998, accident, Dr. Ziegler saw claimant on November 16, 2000.

Dr. Ziegler had claimant's previous medical treatment records to review. After reviewing the medical records, taking a history from the claimant, and conducting a physical examination of claimant, Dr. Ziegler diagnosed claimant with a combination of soft tissue abnormality of the cervical spine causing cervical and head pain along with post traumatic stress syndrome related to his June 17, 1998, work-related accident. His treatment recommendations to improve claimant's condition is a trial and error procedure using different classes of drugs to determine the benefit on claimant's condition. The

doctor determined claimant's headaches were trauma induced from his accidental injury and have their origin in the neck area.

On cross examination, Dr. Ziegler was asked to assume that either examining or treating doctors McKinney, Geis and Bieri all expressed opinions that claimant did not need future medical treatment. Based on that information, Dr. Ziegler testified that if claimant's condition was the same as when those physicians expressed their opinion as it was when he saw claimant in November 2000, his opinion, at that time, would have been different from those physicians opinions as he would have determined claimant was in need of medical treatment for the pain in his neck and resulting headaches.

The Board, therefore, affirms the ALJ's conclusion that claimant has proven the medical treatment as prescribed by Dr. Ziegler is reasonably necessary to cure and relieve the effects of the June 17, 1998, work-related injury.²

Claimant filed a request before the ALJ, for post-award attorney fees as provided for in the post-award medical benefit procedure statute found at K.S.A. 44-510k(c). But the ALJ did not address the attorney fee request. Thus, the Board remands only the attorney fee issue to the ALJ for a hearing and determination on claimant's request for attorney fees.³ This should include claimant attorney's time for the appeal to the Board.

Award

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Brad E. Avery's March 19, 2001, Order granting claimant's request for post-award medical treatment, should be, and is hereby, affirmed. Claimant's request for post-award attorney fees is remanded to the ALJ for a hearing and decision.

IT IS SO ORDERED.

Dated this ____ day of June 2001.

² See K.S.A. 44-510h(a).

³ See K.S.A. 44-536(g).

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Topeka, Kansas
John David Jurcyk, Lenexa, Kansas
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director